

**REMARKS**

Applicant wishes to thank the Examiner for the phone interview on October 4<sup>th</sup>, 2002. Per the Examiner's suggestion, the claims have been amended and no new matter has been added.

After entry of this Amendment, claims 19-31 are presented. Claims 19-31 are similar to cancelled claims 14-18; however, for ease of amending the claims, claims 14-18 have been cancelled and claims 19-31 are substitute claims.

Claims 14-15 were rejected under 35 U.S.C. § 102(a) or (b) as anticipated by U.S. Patent No. 5,866,145 to Stavroff et al. (Stavroff '145).

Claims 14-15 and 17 were rejected under 35 U.S.C. § 103(a) as unpatentable for obviousness over GB 1479 199 in view of JP 018113530 and Biener 4943432, by themselves or in combination.

Claims 14-15 and 17 were rejected under 35 U.S.C. § 103(a) as unpatentable for obviousness over U.S. Patent No. 5,866,145 to Stavroff et al. (Stavroff '145).

Claims 14-18 were rejected under 35 U.S.C. § 103(a) as unpatentable for obviousness over U.S. Patent No. 5,866,145 to Stavroff et al. (Stavroff '145) in view of U.S. Patent No. 5,922,313 to Steward (Steward '313) in further view of U.S. Patent No. 5,827,870 to Chodosh (Chodosh '870).

Claims 14-18 were rejected under 35 U.S.C. § 103(a) as unpatentable for obviousness over GB 1479 199 in view of JP 018113530 and Biener 4943432, by themselves or in combination, and further in view of U.S. Patent No. 5,827,870 to Chodosh (Chodosh '870).

Reexamination of the application as amended and allowance of the new claims are respectfully requested.

**I. AMENDMENTS TO THE APPLICATION**

Claims 14-18 have been canceled. Entry of the new claims 19-31 to the application is respectfully requested. As detailed below, these amendments introduce no new matter nor do they raise any new issues. Moreover, claims 19-31 are similar to claims 14-18; however, for ease of amending the claims, claims 14-18 have been cancelled and claims 19-31 are substitute claims and are fully supported by the specification.

For the convenience of the Examiner and in compliance with recently-amended 37 C.F.R. § 1.121, Applicant has attached as a separate sheet of all pending claims, including those which have been canceled and added.

## II. SYNOPSIS OF THE INVENTION

The claimed invention teaches a unique composition: an exfoliating and scrubbing composition comprised of at least 90% Dead Sea mineral salts and a base composition. In one embodiment, the base composition is comprised of ancillary components selected from a group consisting of a lipid soluble component, an emulsifier component, an antioxidant component, a preservative component, a solvent component, a thickener component, a hydrophilic component and a fragrance. Claims 21-27 better describe the ancillary components of the base composition.

In a unique feature, the exfoliating and scrubbing composition is comprised of about ten parts Dead Sea salt to one part of the base composition such that the 10 parts Dead Sea salt is in suspension with the base composition and does not separate into different layers.

## III. THE PRIOR ART REJECTIONS

### A. The Anticipation Rejections Under 35 U.S.C. § 102(a)

Claims 14-15 were rejected under 35 U.S.C. § 102(a) or (b) as anticipated by U.S. Patent No. 5,866,145 to Stavroff et al. (Stavroff '145).

Claims 14-15 have been cancelled and replaced with claims 19-31, which further define the claimed invention.

First, Stavroff '145 teaches a two-phase body polisher composition comprising 66% by weight Dead Sea salt, 33% by weight oil emollient and 1% by weight fragrance (claim 4). In contrast, claim 19 recites a composition of about 90% Dead Sea salts. Also, Stavroff '145 *does not teach* that the percentage of Dead Sea salt and the base composition (i.e. oil in the case of Stavroff '145) are contained in one-phase. That is, in the claimed embodiment, the 10 parts Dead Sea salt (or about 90% Dead Sea salt) is in the same phase with the base component and the two do not separate (claim 30). Common to many sea salt plus oil emollient preparations is that they separate into two-phases, the denser of the two components (i.e. sea salts) being on the bottom and the less dense of the two components (i.e. oil) being on top. The claimed invention

is unique and distinguishes from the prior art because there is only one-phase. Moreover, with two-phase compositions such as that in the prior art, the user has to thoroughly mix the two phases before use. In contrast, in the claimed invention there is no need for mixing because the composition is one thick paste and the user can directly apply the exfoliating/scrubbing composition directly from the jar/container.

Further, Stavroff '145 teaches a two-phase body polisher comprised of 66:33:1 part salt: oil:fragrance, respectively. Stavroff '145 *does not* teach any other ancillary components as taught by the claimed invention in the base composition. For example, Stavroff '145 *does not* teach a lipid soluble component, an emulsifier component, an antioxidant component, a preservative component, a solvent component, a thickener component and a hydrophilic component (new claims 21-27).

Thus, the unique exfoliating/scrubbing compositions of the claimed invention are patentable over Stavroff '145 because Stavroff '145 *does not* teach or suggest the claimed invention.

Accordingly, the Examiner is respectfully requested to withdraw this rejection.

#### **B. The Obviousness Rejections Under 35 U.S.C. § 103(a)**

##### **1. Rejection over GB 1479 199 in view of JP 018113530 and Biener 4943432.**

Claims 14-15 and 17 were rejected under 35 U.S.C. § 103(a) as unpatentable for obviousness over GB 1479 199 in view of JP 018113530 and Biener 4943432, by themselves or in combination.

Claims 14-18 have been cancelled and replaced with claims 19-31, which further define the claimed invention.

The claimed invention is not obvious over the cited prior art, alone or in combination, because the prior art do teach or suggest the claimed invention.

First, taken alone none of the prior art teaches the claimed invention. In the first instance, the claimed invention claims at least about 90% Dead Sea salts, or about ten parts Dead Sea salts to every one part base composition. In the second instance, the claimed invention teaches a composition that is a thick paste mixture in one phase.

GB 1479 199 teaches a composition comprised of salt crystals, propylene glycol and emollient. GB 1479 199 *does not* teach that: i) salt crystals are Dead sea salt crystals (claim 19); ii) other ancillary components in the base composition are selected from a group consisting of emulsifiers, antioxidants, preservatives, solvents, thickeners, hydrophilics and fragrance (claim 20); and iii) alternative scrubbing agents such as silica and pumice (claim 31). All this is in the claimed invention and is *not* taught in GB 1479 199.

JP 018113530 teaches compositions comprised of 20% by weight Dead Sea salts (abstract). In contrast, the claimed invention claims compositions comprising ten parts Dead Sea salts, which is more than twice the amount by weight of Dead sea salts in JP 018113530 which discloses a 20% by weight Dead sea salt composition. Further, the claimed composition is in one suspension or in one-phase (claim 30). There is no mention of this unique property in JP 018113530. Typical of many bathing salt compositions, the salt components will settle to the bottom and the other less dense components will float on top. Lastly, JP 018113530 *does not* teach that the composition is further comprised of a base composition containing various ancillary components (claims 21-27). Thus, JP 018113530 *does not* teach the claimed invention because JP 018113530 *does not* teach the proper weight percentage of Dead Sea salts (90% versus 20%), *does not* teach the base composition and *does not* teach the unique one-phase composition.

Similarly, Biener 4943432 *does not* teach the claimed invention because Biener 4943432 *does not* teach an exfoliating/scrubbing composition comprised of mostly Dead Sea salts and a base composition further comprising of other ancillary components selected from the group consisting of emulsifiers, antioxidants, preservatives, solvents, thickeners, hydrophilics and fragrance. All this is claimed in the claimed invention (new claims 19-31).

Thus, alone or in combination the prior art references *do not* teach the claimed invention (above). Further, in order for the Office Action to combine the prior art references to reject the claimed invention, there has to be some teaching or suggestion in the prior art. In the absence of such teaching or suggestion, the rejection is not permissible.

In In re Lee, the Board of Patent Appeals and Interferences improperly relied on "common knowledge and common sense" of a person of ordinary skill in art to find the claimed invention obvious over a combination of prior art references. In re Lee, 61 U.S.P.Q. 1430. Under the Administrative Procedure Act (APA), an obligation of the Board to develop

evidentiary basis for its findings is clear and the Board's findings must extend to all material facts and be documented on record. Id. Since "common knowledge and common sense" are not specialized knowledge and expertise in the Board as contemplated by the APA, they may not be substituted for evidence. Id.

Further, patent examiners and the Board of Patent Appeals and Interferences, in relying on what they assert to be general knowledge to negate patentability on the ground of obviousness, *must articulate that knowledge* and place it on record, since examiners and Board are presumed to act from the viewpoint of a person of ordinary skill in the art in finding relevant facts, assessing significance of prior art, and making ultimate determinations of obviousness; failure to do so is inconsistent with effective administrative procedure and judicial review. In short, the board *cannot rely on conclusory statements* when dealing with particular combinations of prior art and specific claims, but must set forth a rationale on which it relies. Id.

In rejecting the claimed invention (claims 14-18), the Office Action improperly used "common knowledge and common sense" to reject the claims stating that one skilled in the art would have been taught to combine the references.

Thus, the above remarks for the basis of rejecting the claimed invention are conclusory statements based on common knowledge and common sense and as stated above are improper.

## 2. Rejection over Stavroff '145 in view of Steward '313.

Claims 14-15 and 17 were rejected under 35 U.S.C. § 103(a) as unpatentable for obviousness over Stavroff '145 in view of Steward '313.

Claims 14-15 and 17 have been cancelled and replaced with claims 19-31, which further define the claimed invention. The claimed invention is not obvious over the cited prior art, alone or in combination, because the prior art *do teach* or suggest the claimed invention.

The claimed invention is not obvious over Stavroff '145 as discussed above.

The claimed invention is not obvious over Steward '313 because Steward '313 teaches an antimicrobial lotion, and *does not* teach an exfoliating/scrubbing composition comprising about ten parts Dead Sea salt and a base composition. Although, the base composition of the claimed invention is similar to a lotion because it contains lotion-like ingredients (i.e. lipid soluble component, emulsifiers...etc; claims 21-27), it is used to hold the Dead Sea salt together. The user would not use the claimed invention to protect the skin. The

claimed invention is used to exfoliate and scrub the topical layers (i.e. layers comprising of dead keratinocytes) off the skin thus bringing to the surface new and viable skin cells (i.e. keratinocytes). Thus, Steward '313 *does not* teach the use of Dead Sea salts as a scrubber/cleanser, that is claimed in the claimed invention and the compositions of Steward '313 is distinguished from the prior art.

Also, in combining Stavroff '145 and Steward '313, one skilled in the art would still get a composition consisting of a two-phase composition. The claimed invention teaches a one-phase composition (claim 30).

Further, as discussed above, in order for teachings in more than one prior art reference to be combined, there has to be some teaching or suggestion in the prior art references. In the absence of such teachings or suggestions, one of ordinary skill in the art in using common knowledge or common sense to combine the references is improper. In re Lee, 61 U.S.P.Q. 1430.

Therefore, the claimed invention is not obvious over Stavroff '145 in view of Steward '313 because alone, or in combination, the prior art references do not teach the claimed invention.

### **3. Rejection over Stavroff '313 in view of Steward '313 in further view Chodosh '870.**

Claims 14-18 were rejected under 35 U.S.C. § 103(a) as unpatentable for obviousness over Stavroff '145 in view of Steward '313 in further view of Chodosh '870.

Claims 14-18 have been cancelled and replaced with claims 19-31, which further define the claimed invention. The claimed invention is not obvious over the cited prior art, alone or in combination, because the prior art do not teach or suggest the claimed invention.

Discussions of the claimed invention not being obvious over Stavroff '145 in view of Steward '313 are discussed above.

The claimed invention is not obvious over Chodosh '870 because Chodosh '870 teaches an antimicrobial composition further comprising pumice (column 5, line 64). First, Chodosh '870 *does not* use Dead Sea salts, a central feature of the claimed compositions. Secondly, Chodosh '870 *does not* teach the use of a base composition to mix and hold the Dead Sea salts as one suspension (one-phase).

If one of ordinary skill in the art were to combine the cited prior art, the result would be a two-phase composition comprising of about 66% Dead Sea salts, 33% oil, pumice and an antimicrobial lotion. This composition *does not* teach the claimed invention because the primary reference (Stavroff) is still a two-phase composition comprising about 66% Dead Sea salts, which is not about the 90% claimed in the present invention.

Therefore, the claimed invention is not obvious over Stavroff '145 in view of Steward '313 in further view of Chodosh '870 because alone, or in combination, the prior art references do not teach the claimed invention.

**4. Rejection over GB 1479 199 in view of JP 018113530 and Biener 4943432, and in further view Chodosh '870.**

Claims 14-18 were rejected under 35 U.S.C. § 103(a) as unpatentable for obviousness over GB 1479 199 in view of JP 018113530 and Biener 4943432, by themselves or in combination, and further in view Chodosh '870.

Claims 14-18 have been cancelled and replaced with claims 19-31, which further define the claimed invention. The claimed invention is not obvious over the cited prior art, alone or in combination, because the prior art do teach or suggest the claimed invention.

Each cited prior art and reasons why they do not teach the claimed invention has been discussed above. Also, as previously discussed, in order for a proper rejection under 35 U.S.C. § 103(a) to exist, there has to be some teaching and/or suggestion in the prior art references to combine to teach the claimed invention.

In combining In the absence of such teachings, the prior art references, alone or in combination, do not teach the claimed invention: GB 1479 199 teaches a composition comprised of salt crystals, propylene glycol and emollient; JP 018113530 teaches compositions comprised of 20% by weight Dead sea salts (abstract); and Biener '432 teaches 26% by weight Dead Sea salts. Neither GB 1479 199, JP 018113530 and/or Biener '432 teach a composition comprising about 90% or ten parts Dead Sea salts. That is claimed by the claimed invention. Further, in combining Chodosh '870, does not result in the claimed invention because the addition of pumice still does not give a composition that is about 90% or ten parts Dead Sea salts.

Thus, the cited prior art, alone or in combination, do not make obvious the claimed invention because none of the prior art teach a composition comprising about 90% or ten parts Dead Sea salts.

Accordingly, the Examiner is respectfully requested to withdraw the rejections under 35 U.S.C. §103(a) because of the lack of teachings in the prior art.

IV. **CONCLUSION**

In conclusion, claims 14-18 have been canceled and per suggestion of the Examiner in the telephone interview of Oct. 4<sup>th</sup>, 2002, new claims have been added which better define the claimed invention without adding new subject matter or raising new issues. Essentially the claims claim a unique composition, comprising of about 90% Dead Sea salt and a base component further comprising various ancillary components. These claims are neither anticipated by nor are obvious over the references of record as discussed above. Accordingly, prompt allowance of these claims is respectfully requested.

Respectfully submitted,

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MARKED UP VERSION SHOWING THE CHANGES

14. (Canceled)
15. (Canceled)
16. (Canceled)
17. (Canceled)
18. (Canceled)
  
19. (New) An exfoliating and scrubbing composition comprising:
  - (a) at least about 90% by weight Dead Sea mineral salts; and
  - (b) a base component.
20. (New) The exfoliating and scrubbing composition as claimed in claim 19 wherein the base component is further comprised of:
  - (a) deionized water; and
  - (b) ancillary components selected from the group consisting of a lipid soluble component, an emulsifier component, an antioxidant component, a preservative component, a solvent component, a thickener component, a hydrophilic component and a fragrance.
21. (New) The composition as claimed in claim 20, wherein the lipid soluble component is selected from the group consisting of dimethicone, bisabolol, polyoxyethylene fatty acid esters, cetyl alcohol, glyceryl triester, white petrolatum and mineral oil.
22. (New) The composition as claimed in claim 20, wherein the emulsifier component is selected from a group consisting of mono and distearate esters of polyoxyethylene and free polyethylene oxide, partial esters of lauric, palmitic, stearic, and oleic acids, hexitol anhydrides and ethoxylated jojoba oil.
23. (New) The composition as claimed in claim 20, wherein the antioxidant component is further comprised of propylene glycol, propyl gallate and citric acid.
24. (New) The composition as claimed in claim 20, wherein the preservative component, is further comprised of imidazolyl urea and a complex of propylene glycol, phenoxyethanol, chlorphenesin and methyparaben.
25. (New) The composition as claimed in claim 20, wherein the solvent component is selected from the group consisting of ethylene glycol, propylene glycol and 1,3-butylene glycol.

26. (New) The composition as claimed in claim 20, wherein the thickener component is selected from the group consisting of alginate derivatives and preneutralized carbomer 430.

27. (New) The composition as claimed in claim 20, wherein the hydrophilic component is selected from the group consisting of mannitol, arginine, serine, pyrrolidone carboxylate, sucrose, citrulline, glycogen, histidine, alanine, threonine, glutamic acid and lysine.

28. (New) The composition as claimed in claim 19 wherein the composition is comprised of about 10 parts Dead Sea salt to every one part base composition.

29. (New) The composition as claimed in claim 19, further comprising glycerin.

30. (New) The composition as claimed in claim 19 wherein about 10 parts of the Dead Sea salts remain suspended in one part of the base composition and do not separate out into different layers.

31. (New) The composition as claimed in claim 19, further comprising a component selected from the group consisting of silica and pumice.